IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.639 of 2001

Mr.N.D. Wargaonkar .. Appellant

versus

Gajana Narayan Morye & Anr. .. Respondents

...

Mr.P.S. Dani for the appellant.

Mr.P.R. Arjunwadkar for the respondents.

CORAM : D.G. KARNIK, J

DATED : 8th September 2006

P.C.:

1. This appeal by the original defendant is against the order dated 13th September 2000 passed by the Civil Judge, Sr. Division Thane, rejecting the defendant's application for appointment of a Court Receiver of the suit property.

2. The appellant herein is the original defendant and the respondents are the plaintiffs. For the sake of convenience, parties are hereinafter referred to with reference to their status in the original suit. Plaintiffs filed a suit against the defendant for an injunction restraining the defendant from disturbing their possession of the suit property bearing house no.749 A situate at Ward no.5 in Thane Municipal Corporation. The plaintiffs claimed that the suit property originally belonged to one Mr.Wahid Khan, who by a sale deed dated 3rd February 1997 sold the same to the plaintiffs and put them possession. The plaintiffs claimed that they were in possession of the property as owners under sale deed dated 3rd February 1997. They claimed an injunction restraining the defendant from disturbing their possession.

3. The defendant filed the written statement denying the plaintiffs' ownership. He claimed that by a sale deed dated 25th May 1992, the original owner Wahid Khan had sold the suit property to him and therefore, he could not have transferred the suit property to the plaintiffs again. The defendant further alleged that the plaintiffs illegally

dispossessed him and made a counterclaim for possession of the suit property by his written statement. The defendant thereafter made an application for appointment of a Court Receiver and further prayed for a direction to the Court Receiver to take possession of the suit property from the plaintiffs. By an order dated 13th September 2000, the trial Court dismissed the defendant's application for appointment of a receiver. That order is impugned in this appeal.

4. In his written statement the defendant has admitted that the plaintiffs are in possession of the suit property. The plaintiffs in the suit claim to be lawfully in possession of the suit property under the sale deed dated 3rd February 1997. Whether the said sale deed is valid or otherwise would be decided at the trial. Prima facie, the plaintiffs are in possession of the property in pursuance of a sale deed executed by Mr.Wahid Khan. Original ownership of Wahid Khan is not denied though it is alleged by the defendant that Wahid Khan had sold the suit property to him earlier. The claim of the defendant that he had purchased the suit property earlier would also be decided at trial. It cannot be said, prima facie,

that plaintiffs have no title to the suit property, though their title may be disputed.

5. In my view the defendant has not made out a case for appointment of receiver. He would have to establish on trial his ownership and right to possess the suit property. The defendant has not pleaded any waste of the suit property at the hands of the plaintiffs. In the circumstances, the trial Judge was right in his refusal to appoint a court receiver. Since the suit is old, interest of justice would be served by expediting hearing of the suit.

6. In the circumstances, appeal is dismissed. However, hearing of the suit (being Special Civil Suit no.65 of 2000) pending in the Court of Civil Judge, Sr.Division, Thane, is expedited. The trial Judge is requested to hear the suit expeditiously and in any event within a period of two years.

D.G. KARNIK, J